

SERVED: February 2, 2006

NTSB Order No. EA-5208

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 30<sup>th</sup> day of January, 2006

_____	)	
MARION C. BLAKEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket No. SE-17186
v.	)	
	)	
KATHLEEN C. WHEELER,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty in this matter,<sup>1</sup> issued following an evidentiary hearing held on January 26, 2005. The Administrator's order suspended respondent's

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<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

commercial pilot certificate for 30 days,<sup>2</sup> based on alleged violations of 14 C.F.R. §§ 61.3(a)(1) and (2),<sup>3</sup> 61.3(c)(1),<sup>4</sup> and

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<sup>2</sup> In addition to the commercial pilot certificate, respondent holds flight instructor and airman medical certificates.

<sup>3</sup> Title 14 C.F.R. § 61.3(a) provides:

§ 61.3 *Requirement for certificates, ratings, and authorizations.*

(a) *Pilot certificate.* A person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry, unless that person--

(1) Has a valid pilot certificate or special purpose pilot authorization issued under this part in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. However, when the aircraft is operated within a foreign country, a current pilot license issued by the country in which the aircraft is operated may be used; and

(2) Has a photo identification that is in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. The photo identification must be a:

(i) Valid driver's license issued by a State, the District of Columbia, or territory or possession of the United States;

(ii) Government identification card issued by the Federal government, a State, the District of Columbia, or a territory or possession of the United States;

(iii) U.S. Armed Forces' identification card;

(iv) Official passport;

(v) Credential that authorizes unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542; or

(vi) Other form of identification that the Administrator finds acceptable.

<sup>4</sup> Title 14 C.F.R. § 61.3(c)(1) provides:

91.203(a)(1) and (2).<sup>5</sup> The law judge found respondent had violated §§ 61.3(a)(1) and (2), 61.3(c), and 91.203(a)(1) and (2), and reduced the suspension of respondent's commercial pilot

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(c) *Medical certificate.* (1) Except as provided for in paragraph (c)(2) of this section, a person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft, under a certificate issued to that person under this part, unless that person has a current and appropriate medical certificate that has been issued under part 67 of this chapter, or other documentation acceptable to the Administrator, which is in that person's physical possession or readily accessible in the aircraft.

<sup>5</sup> The relevant portions of 14 C.F.R. § 91.203(a) provide:  
§ 91.203 *Civil aircraft: Certifications required.*

(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following:

- (1) An appropriate and current airworthiness certificate. Each U.S. airworthiness certificate used to comply with this subparagraph (except a special flight permit, a copy of the applicable operations specifications issued under § 21.197(c) of this chapter, appropriate sections of the air carrier manual required by parts 121 and 135 of this chapter containing that portion of the operations specifications issued under § 21.197(c), or an authorization under § 91.611) must have on it the registration number assigned to the aircraft under part 47 of this chapter..
- (2) An effective U.S. registration certificate issued to its owner or, for operation within the United States, the second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b), or a registration certificate issued under the laws of a foreign country.

certificate from 30 days to 25 days.<sup>6</sup> We deny respondent's appeal.

The Administrator's August 10, 2004 order, which served as the complaint before the law judge, alleged that respondent terminated a flight at Mishawaka Pilot's Club Airport in Elkhart, Indiana, on June 8, 2003. The complaint alleges that respondent lost control of the aircraft and ran the aircraft into a ditch, causing damage to the aircraft's nose gear and propeller. When an FAA inspector asked to see respondent's airman certificate, valid photo identification, and medical certificate, respondent was unable to produce any of those items. At the time of the flight, the aircraft allegedly did not have a valid airworthiness certificate, but only had an expired ferry permit. When the FAA inspector asked her for the aircraft's registration, respondent could only produce a registration belonging to the aircraft's previous owner. Finally, the complaint alleges that although respondent told the FAA inspector that she would provide the items in question to the local Flight Standards District Office (FSDO) the next day, respondent did not do so.

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<sup>6</sup> The Administrator did not appeal the law judge's reduction in sanction.

At the hearing, the Administrator called FAA Inspector Harold Jones and FAA technical specialist Gary Suozzi, and presented certified copies of respondent's airman record and the aircraft records as exhibits. Respondent also testified at the hearing, and presented affidavits from the previous owner and current owner of the aircraft, in an attempt to dispute the charge that the aircraft did not have a proper registration certificate pursuant to § 91.203(a)(2). The law judge acknowledged that there was a conflict in the testimony on some issues, and concluded that the Administrator's witnesses and evidence were more credible and more persuasive than the evidence that respondent proffered.

On appeal, respondent does not appear to contest the violations regarding her photo identification (§ 61.3(a)(2)) and medical certificate (§ 61.3(c)(1)); instead, respondent argues that the law judge should not have imposed a sanction for these or any violations, based on the Aviation Safety Reporting Program (ASRP). Respondent contests the remaining violations involving §§ 61.3(a)(1) and 91.203(a)(1) and (2). Respondent states that she inadvertently left her *permanent* pilot certificates in an old purse, while transferring her old, expired, *temporary* pilot certificates to a new purse. Respondent's Brief at 2. Respondent also asserts that the

aircraft in question (an experimental, amateur-built airplane) contained a special airworthiness certificate, and that it contained a, "Dealer's Registration Certificate issued to Canamera Holdings, LLC." Id. Respondent argues that the Administrator's contentions that the special airworthiness certificate was a "ferry permit" and that Canamera Holdings, LLC was not the registered owner of the aircraft are incorrect.

Respondent's appeal brief sharply criticizes the law judge's conduct at the hearing, and argues that the law judge was biased in favor of the Administrator. Respondent argues that her testimony was more credible than the testimony of Inspector Jones, who had questioned respondent regarding her certificates, and that the law judge's consideration of Inspector Jones's testimony as more credible than respondent's testimony demonstrates his alleged bias.<sup>7</sup> Respondent argues that certain portions of Inspector Jones's testimony indicate that Inspector Jones was not truthful. We have examined each of these allegations of untruthfulness and find that none of them are substantively material to the case. Specifically, we reject respondent's argument regarding: a business card that Inspector

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<sup>7</sup> We note that the law judge's findings on the pilot certificate and airworthiness/registration violations (§ 61.3(a)(1) and § 91.203(a)(1) and (2)) were the only ones that turned on credibility findings.

Jones gave to respondent when asking her for her certificates<sup>8</sup>; statements respondent made regarding her ability to renew her certificates<sup>9</sup>; statements regarding whether respondent had a carbon copy of her certificates<sup>10</sup>; testimony regarding whether respondent ever contacted the local FSDO as she had promised<sup>11</sup>;

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<sup>8</sup> Respondent argues that the law judge was biased when he stated that he did not recall that Inspector Jones had written his personal phone number on the back of his business card. Respondent has not identified any portion of this testimony that constitutes reversible error. Whether Inspector Jones wrote his personal phone number on the back of his business card is not a material issue and does not demonstrate that the law judge was biased.

<sup>9</sup> Respondent argues that Inspector Jones erroneously stated that respondent, "said she could not renew her pilot certificates at any FSDO because she needed her driver's license." Transcript (Tr.) 19. Respondent argues that Inspector Jones knew that she did not need to "renew" her certificates, because she had current pilot and medical certificates. Tr. 64. Respondent's argument regarding Inspector Jones's misuse of the word "renew" does not indicate that the law judge was biased by finding Inspector Jones's testimony to be credible.

<sup>10</sup> Inspector Jones stated that respondent handed him a carbon copy of a temporary airman's certificate, containing a hand-written Flight Instructor notation. Tr. 20. Respondent fails to show how Inspector Jones's possible misuse of the phrase "carbon copy" is material to the law judge's credibility determination.

<sup>11</sup> Respondent argues that Inspector Jones lied when he testified that he never received a phone call from respondent, despite respondent's promise to call Inspector Jones after she arranged for her certificates to be delivered to her via FedEx. Inspector Jones testified that he had gone to the office the day after the incident to wait for respondent, but that no one in his office heard from respondent after June 8, 2003. Tr. 36. Respondent argues that she left voice mail messages for Inspector Jones on June 9, 2003, and produced a "record of telephone conversation" authored by Inspector Robert C. Koneful

and Inspector Jones's testimony that he did not have access to a photocopier at the site of the incident.<sup>12</sup>

The Board defers to the credibility findings of law judges absent a showing that such findings are clearly erroneous.

Administrator v. Smith, 5 NTSB 1560, 1563 (1986); see also Administrator v. Crocker, NTSB Order No. EA-4565 at 6 (1997).

Here, respondent has not shown that the law judge's determinations were clearly erroneous, but instead has presented an assortment of immaterial arguments that primarily center on other possible interpretations of certain terms that an FAA inspector used at the administrative hearing.<sup>13</sup> We find no

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on August 13, 2003 – more than two months after respondent promised to arrive at Inspector Jones's office with her certificates. Exhibit R-2. This does not demonstrate that Inspector Jones was untruthful.

<sup>12</sup> Respondent argues that Inspector Jones dishonestly testified that he did not have the ability to make photocopies while at the site of the investigation. Respondent also argues that such testimony is dishonest because Inspector Jones had a camera, and could have photographed the documents in question. Respondent also suggests that Inspector Jones could have used a copy machine at the airport office, or taken the documents back to his office to make photocopies. Respondent's hypothetical scenarios regarding photographing documents and asking to borrow a photocopier are neither germane to the law judge's credibility determination nor material to the outcome of the investigation.

<sup>13</sup> We note that respondent's counsel did not attempt to clarify these points on cross-examination at the hearing.



reason to reverse the law judge's credibility findings in the instant case.<sup>14</sup>

Respondent also argues that she did not receive a fair and impartial hearing, and disputes the law judge's questioning of certain witnesses by arguing that such questioning provides indicia of bias. In reviewing the transcript, we do not find that the law judge's questions were unreasonable. The law judge engaged in such questioning in the interest of clarifying the record, not due to any personal bias. We have long allowed law judges to engage in such inquiries. See 49 C.F.R. § 821.35(b); Administrator v. Kachalsky, NTSB Order No. EA-4847 at n.4 (2000); see also Administrator v. Reese, NTSB Order No. EA-4896 at n.4 (2001).

Furthermore, respondent argues that the law judge was obligated to waive the sanction for respondent's violations under the ASRP.<sup>15</sup> The law judge carefully considered the

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<sup>14</sup> We note that respondent's brief also contains personal insults regarding the appearance and personality of Inspector Jones. Respondent's Brief at 8. This unprofessional conduct is neither appropriate nor persuasive.

<sup>15</sup> Under the ASRP, the imposition of a sanction may be waived, despite the finding of a regulatory violation, as long as certain other requirements are satisfied. Aviation Safety Reporting Program, Advisory Circular 00-46D at ¶ 9c (Feb. 26, 1997). The Program involves filing a report with the National Aeronautics and Space Administration (NASA); the filing of a report with NASA concerning a violation of the Federal Aviation Regulations will obviate the imposition of a sanction where (1)

application of the ASRP to the facts of the instant case, and concluded that, although respondent had filed a timely report with NASA, her operation of an aircraft without her certificates and her photo identification was not inadvertent. The law judge noted that respondent did not visit any FSDO along her journey to determine what she could do about the missing certificates. With regard to the § 91.203(a)(1) and (2) violations, however, the law judge *did* apply the ASRP to reduce the sanction, because he found that respondent had relied on the aircraft owner's advice that the registration and airworthiness certificates in the aircraft were appropriate.

The Board finds that safety in air commerce or air transportation and the public interest requires the affirmation of the law judge's initial decision.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and

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the violation was inadvertent and not deliberate; (2) the violation did not involve a criminal offense, accident, or action found at 49 U.S.C. § 44709; (3) the person has not been found in any prior FAA enforcement action to have committed a regulatory violation for the past 5 years; and (4) the person completes and mails a written report of the incident to NASA within 10 days of the violation. Id.

2. The 25-day suspension of respondent's commercial pilot certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>16</sup>

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HERSMAN, and HIGGINS, Members of the Board, concurred in the above opinion and order.

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<sup>16</sup> For the purpose of this order, respondent must physically surrender her certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).